

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Donald Gay, ) C/A NO. 3:07-4006-CMC-JRM  
 )  
Petitioner, ) ) **OPINION and ORDER**  
 )  
v. )  
 )  
Anthony Padula, Warden of Lee CI, )  
 )  
Respondent. )  
 )

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This matter is before the court on the *pro se* application for writ of habeas corpus, filed in this court pursuant to 28 U.S.C. § 2254.

Petitioner is an inmate of the South Carolina Department of Corrections serving a sentence of life imprisonment for murder. Petitioner filed this habeas application on December 10, 2007, and Respondent filed a motion for summary judgment, supported by copies of portions of the state court record, on February 15, 2008.<sup>1</sup>

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(c), DSC, this matter was referred to United States Magistrate Judge Joseph R. McCrorey for pre-trial proceedings and a Report and Recommendation (“Report”). On August 6, 2008, the Magistrate Judge issued a Report recommending that Petitioner’s motion to amend be denied and that Respondent’s motion for summary judgment be granted and this matter dismissed with prejudice. The Magistrate Judge advised Petitioner of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Petitioner filed objections to the Report on September

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<sup>1</sup>Petitioner’s application is dated August 6, 2007. However, the envelope in which the petition was mailed is postmarked December 10, 2007. It was received by the court on December 11, 2007.

8, 2008.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and Petitioner's objections, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order. Petitioner has failed to offer any argument to overcome the conclusions of the Magistrate Judge, which this court finds are correct. Therefore, Petitioner's motion to amend is **denied** and Respondent's motion for summary judgment is **granted**. This matter is dismissed with prejudice.

**IT IS SO ORDERED.**

s/ Cameron McGowan Currie  
CAMERON McGOWAN CURRIE  
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina  
September 10, 2008

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